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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,403	12/30/2003	Earl L. Hatley	H0004635	7547

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EXAMINER
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PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/748,403

Applicant(s)

HATLEY, EARL L.

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/28/05, 1/2/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Specification***

1. The disclosure is objected to because of the following informalities: There is no Claim
- 21.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3 – 5 and 14 – 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 3 – 5 and 14 – 15 recite the limitation "said nylon 6 moiety", each in line 1. There is insufficient antecedent basis for this limitation in the claims. For purposes of examination, the nylon 6,66 layer will be interpreted to comprise nylon 6.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1 – 8, 10 – 17, 19 – 20 and 22 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohba et al (U.S. Patent No. 6,605,344 B1) in view of Bradfute et al (U.S. Patent No. 5,658,625).

With regard to Claims 1 – 5, 13 – 15 and 23 – 24, Ohba et al discloses a packaged produce product (corn; column 10, lines 65 – 67; column 11, lines 1 – 4) packaged in a bag or pouch (column 11, lines 4 – 6) formed from a film comprising a first layer comprising polyamide (gas barrier film comprising nylon 6; column 9, lines 5 – 20) and a second layer comprising a layer of nylon 6,66 which is used to seal the package (heat seal layer comprising nylon 6,66, therefore nylon 6; column 10, lines 45 – 56); the package is therefore sealed via the nylon 6,66 layer; the film is formed by a known lamination process (column 10, lines 26 – 32). Ohba et al fail to disclose a film that is formed by coextrusion.

Bradfute et al teach that coextrusion is a known lamination process in the making of a film for the purpose of obtaining a film made either with or without tie layers (column 7, lines 30 – 37). One of ordinary skill in the art would therefore have recognized the advantage of providing for the coextrusion of Bradfute et al in Ohba et al, which comprises a film, depending on the desired ability to use or not use tie layers in the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for coextrusion in Ohba et al in order to obtain a film made either with or without tie layers as taught by Bradfute et al.

With regard to Claims 10 and 19, Ohba et al discloses a seal layer comprising nylon 6,66, as stated above, and therefore discloses a seal layer having a seal strength of at least 700 grams as it is the claimed seal layer.

With regard to Claims 11 – 12, 20 and 22, Ohba et al disclose the sealing of a single polyamide film to itself to produce the package (envelope sealing; column 10, lines 59 – 61) and the sealing of two films that are overlapped (column 10, lines 43 – 47).

With regard to Claims 6 – 8 and 16 – 17, the thickness of the polyamide film disclosed by Ohba et al is 30  $\mu\text{m}$  (0.1 – 50  $\mu\text{m}$ ; column 6, lines 61 – 63).

6. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohba et al (U.S. Patent No. 6,605,344 B1) in view of Bradfute et al (U.S. Patent No. 5,658,625) and further in view of Reading (U.S. Patent No. 3,038,811).

Ohba et al and Bradfute et al disclose a package for produce, therefore food, as discussed above. The package is used for the boiling of the food (column 1, lines 11 – 15 of Ohba et al). With regard to Claims 9 and 18, Ohba et al and Bradfute et al fail to disclose a package comprising perforations.

Reading teaches the making of perforations (column 2, lines 24 – 29) in a package for food (column 1, lines 8 – 16) which is used for the boiling of the food (column 2, lines 11 – 17) for the purpose of obtaining a package that releases pressure that develops (column 2, lines 24 – 29). One of ordinary skill in the art would therefore have recognized the advantage of providing for the perforations of Reading in Ohba et al and Bradfute et al, which is a package for food, depending on the desired release of pressure of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for perforations in Ohba et al and Bradfute et al in order to obtain good adhesion to obtain a package that releases pressure that develops as taught by Reading.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497.

The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marc Patterson 5/16/05*  
Marc A. Patterson, PhD.  
Examiner  
Art Unit 1772